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Responsibility Analysis of...(Dhian Ekasari & Bambang Tri Bawono)

Responsibility Analysis of Land Deed Officials in the Transfer of Disputed Land Rights Implementation

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Abstract. *The purpose of this research is to find out and analyze: 1). PPAT's responsibility in the transfer of land rights. 2). Implementation of the Registration of Transfer of Land Rights by Sale and Purchase in Magetan Regency. 3). Legal consequences for Land Deed Making Officials (PPAT) who make disputed land deeds in Magetan Regency. This research is a normative juridical approach, with a sociological juridical approach. The collection of primary and secondary data was obtained by using interview techniques and literature study, then analyzed by using qualitative analysis methods. The results of the research concluded: 1) The responsibility of the Land Deed Making Official (PPAT) in the transfer of land rights is regulated in Article 55 of the Regulation of the Head of BPN No. 1 of 2006, PPAT is personally responsible for the implementation of his duties and positions in every deed making. Civilly, the PPAT is responsible individually or personally for his actions in the implementation of his position, both for the deed he made. 2). The implementation of the registration of the transfer of land rights by sale and purchase in Magetan Regency begins with the stage of implementing a sale and purchase transaction between the seller and the buyer. After that, the sale and purchase transaction must be made by the PPAT. PPAT will check the Deposit Receipts (STTS) and PBB Tax Returns (SPPT), then by PPAT the files are brought to the Land Office to be registered as a certificate of ownership for the new land rights holder. After the registration process, the next step is to wait for data verification from the Land Office for the issuance of certificates. 3). The legal consequences of Land Deed Making Officials (PPAT) who make disputed land deeds in Magetan Regency, namely the registration of the transfer of land rights which are the object of dispute related to the recording in the land book is a refusal to register land rights by the local land office so that it cannot registration or amendment of land data is carried out during the blocking. Based on Article 45 PP No. 24 of 1997, the land office refused to register by returning the file in the form of a deed, certificates and related documents to the PPAT concerned as the executor of the registration of the transfer of land rights. The legal consequence of the returned sale and purchase deed remains an authentic deed and can be used again as a basis for registration if the blocking has been revoked by the applicant.*

Keywords: Land Dispute; Land Transfer; PPAT.

1. Introduction

Land has an important role in the development process. The establishment of a housing estate on land requires a long process from land acquisition to obtaining a building permit. The process mentioned above is highly dependent on the status of the land. There are two types of land status known in Indonesia, namely land with the status of state land, and land with the status of land rights.¹

Through this right of control from the State, the State as the governing body will always be able to control or direct the management of the functions of the earth, water and space as well as the natural resources contained therein in accordance with existing regulations and policies, namely within the scope of juridical control with a public aspect.² In connection with the foregoing, it is increasingly felt that there is a need for legal certainty and certainty of land ownership rights. To obtain legal certainty and certainty of land rights, the community needs to register land in order to obtain a land title certificate which serves as a strong proof of ownership of land rights.³

The main principle of registration of land rights is to facilitate security guarantees over land ownership and transfer of rights, for example the buyer will enjoy the land without interference from other parties. In addition, land registration is made to find out if there are third party rights. The main idea in the registration system is to record land rights, then replace proof of ownership for the granting of land rights. The principle of land registration should reflect a thoroughness regarding the ownership of the land and of the Third Parties who influence it. The principle of registration guarantee is the status of the right to provide a guarantee of the accuracy of a list, even if it should provide compensation to anyone who suffers a loss.⁴

Land registration is a prerequisite in efforts to organize and regulate the formation, control, ownership and use of land, including to overcome various land problems. Land registration is intended to provide certainty of rights and legal⁵ protection for holders of land rights with proof of land certificates, as an instrument for structuring land control and ownership as well as a controlling

¹Boedi Harsono, 2007, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, 11th Printing, Djambatan, Jakarta, p.344.

²Muhammad Bakri, 2007, *Hak Menguasai Tanah Oleh Negara (Paradigma Baru Untuk Reformasi Agraria)*, Citra Media, Yogyakarta, p. 5

³Adrian Sutedi, 2012, *Sertifikat Hak Atas Tanah*, Sinar Grafika, Jakarta, p. 105

⁴Mark P. Thompson, 2001, *Modern Land Law*, First Published, Oxford University Press, New York, p. 88

⁵ Sukarmi & Ong Argo Victoria. (2018). *Cash Waqf in Sustaining Of Indonesian Society "In Legal & Economic Perspective"*. AL-ITQAN: Journal of Islamic Sciences: IIUM Malaysia. <https://journals.iium.edu.my/al-itqan/index.php/al-itqan/article/view/43>

instrument in the use and utilization of land. Registration of land rights is a guarantee from the state, and is an important instrument for the protection of land owners. Land registration is *rehtkadaster* which includes the following activities: 1) land measurement, mapping and bookkeeping; 2) registration of such rights; 3) granting of valid land rights certificates as a strong evidence.⁶

Currently, land disputes often occur, such as in the Magetan District. Magetan Regency has 18 sub-districts, this means that the average area of each sub-district is 38.27 km². The distance between the sub-district capitals is not too far, making it one of the favorable factors for carrying out development quickly. This also causes Magetan to become prone to conflict in terms of land disputes.

Often in the sale and purchase of land causes problems. In the short term the buyer may not experience a lawsuit from another party, but in the long term the buyer will experience a lawsuit from another party who feels that he owns or has been harmed by his land rights. According to Article 55 of the Regulation of the Head of the Land Agency National Republic of Indonesia Number 1 of 2006 concerning Provisions Implementation of Government Regulation No. 37 of 1998 concerning Official Position Regulations Land Deed Maker (hereinafter referred to as) Regulation of the Head of BPN No. 1 of 2006) to "PPAT is personally responsible for every deed." Problems arise when the registration of the transfer of land rights is recorded in the land book because land rights are the object of dispute so that the files or documents used in the registration are returned by the land office. There is no regulation regarding PPAT's responsibility for the return of documents by the land office.

Based on the background of the problem above, the author is interested in analyzing the problem of Thesis on land rights with the title "Analysis of the Responsibilities of Land Deed Officials (PPAT) in the Implementation of the Transfer of Disputed Land Rights in Magetan Regency". This study seeks to answer the responsibilities of Land Deed Making Officials (PPAT) in the transfer of land rights, implementation of Land Rights Transfer Registration by Selling and Buying in Magetan Regency, and the legal consequences of Land Deed Making Officials (PPAT) who make disputed land deeds in Magetan Regency. Magetan Regency.

2. Research Methods

The approach method used in this study is a normative juridical approach. Specification of research used is descriptive analytical, which describes the applicable laws and regulations related to legal theories and their

⁶ J.B. Daliyo dan kawan-kawan, 2001, *Hukum Agraria I*, Ed. 5, Prehallindo, Jakarta, p.80

implementation practices.⁷ Primary and secondary data sources obtained by interview method and literature review (study document). The data that has been collected both from field research and library research will be analyzed using descriptive analysis and qualitative analysis methods.

3. Results and Discussion

3.1. Responsibilities of Land Deed Officials (PPAT) in the Transfer of Land Rights

There are two efforts to realize land law certainty. First, by providing complete and clear written legal instruments. Second, by conducting land registration which allows land rights holders to prove their land rights and for the government to implement land policies.⁸

Legal certainty that transports land regarding land ownership and control includes the following elements:

- 1) Certainty on the subject of rights, namely the person or legal entity that is the holder of the right.
- 2) Certainty regarding the object of the right regarding the location of the land, the boundaries of the land and the area of the plot of land.

In order to achieve this purpose, in its implementation, the holder of the registered rights will be given a proof of rights so that they can easily prove their registered rights.

The main task of PPAT is regulated in Article 2 of PP Number 37 of 1998, namely carrying out part of land registration activities by making as evidence that certain legal actions have been carried out regarding land rights or property rights or apartment units which will be used as the basis for registration of changes to land registration data resulting from the legal action. The authority of PPAT according to Article 3 of Government Regulation Number 37 of 1998 that:

To carry out these main tasks, the Land Deed Official has the authority to make Authentic Deeds regarding all legal actions as mentioned above, regarding Land Rights and Ownership Rights to Flat Units located in their working areas. The

⁷ Sumardi Suryabrata, 1993, *Metodologi Penelitian*, Rajawali, Jakarta, p.19

⁸Dyara Radhite Oryza Fea, 2018, *Panduan Mengurus Tanah Rumah dan Perizinannya*, Legality, Yogyakarta, p. 90

Special Land Deed Making Official is only authorized to make a Deed concerning a legal act which is specifically named⁹.

The legal basis for land registration is Act No.5 of 1960 on the LoGA, Government Regulation No.24/1997, then in its implementation it was redefined in the Minister of Agrarian Affairs/Head of the National Land Agency No.3/1997 dated October 1, 1997 concerning Implementing Regulations of Government Regulation No.24/1997 on Land Registration. . The purpose of land registration is to guarantee legal certainty of land rights, including legal certainty on the object of the land parcel (object of rights), legal certainty on the subject of its rights (subject of rights), legal certainty on the types of land rights.¹⁰

In terms of administering land administration, a government agency that is given the authority is appointed, namely the National Land Agency of the Republic of Indonesia (hereinafter referred to as BPN). The land office is a BPN work unit in each district or city area. In carrying out its duties, the land office is assisted by a Land Deed Making Officer (hereinafter referred to as PPAT) whose main task is to carry out some land registration activities by making a deed as evidence and the basis for land registration.

The responsibilities of the Land Deed Making Official (PPAT) are in make and issue the Deed of Transfer of Land Rights, must be in accordance with the provisions of the applicable regulations. Before making and issuing the Deed of Transfer of Land Rights in question. If the land has been registered but does not yet have a Land Rights Certificate, then as a replacement for the Land Rights certificate is a Land Registration Certificate (SKPT) on land made and issued by the Regency/Municipal Land Office, the contents of which explain that the land rights the land does not yet have a Certificate of Land Rights¹¹.

For lands/land rights that have not been registered, the owner of land rights can submit an application to the local head/village head to make and issue a Certificate of Ownership or Land Certificate (SKT) which is known by the local Camat. The responsibilities of the Land Deed Official are as follows:

⁹ Widyawati, & Handoko, Widhi. (2018). The Notary Role / PPAT in Improving Legal Awareness Society to Perform Registration Rights to Land Based on Government Regulation No. 24 of 1997 on Land Registration. *JURNAL AKTA*: Vol. 5, No. 4, 975-980. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4127>

¹⁰ Nurhidayah, 2012, *Pelaksanaan Pemenuhan Tanggung Jawab Ppat Dalam Pembuatan Akta Jual Beli Tanah Beserta Akibat Hukumnya*, Naskah Publikasi, Universitas Muhammadiyah, Surakarta, p.16

¹¹ Farhati, Dewi & Akhmad Khisni. (2018). *Legal Review Of Implementation Endowments Authority Relating To The Under Hand Agreement Made By Waqif (Case Study In Kua Wonosalam, Demak)*. *JURNAL AKTA*: Vol. 5, No. 3. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/3256/2392>

- 1) PPAT must take an oath.
- 2) PPAT is obliged to immediately submit the deed that has been made and issued as well as other documents needed for the making and issuance of another deed to the local Regency/City National Land Agency to be registered in the "land book" and included in the "Certificate of Land Rights" concerned.
- 3) PPAT is obliged to maintain a "List of Deeds" that have been made and issued, according to the form specified in the applicable regulations.
- 4) PPAT is obliged to carry out the instructions that have been given by the National Land Agency and the officials who supervise it;
- 5) PPAT is required to submit monthly "Monthly Reports" which it has made for one month to the head of the Regency/Municipal National Land Agency Office who will report the results of his observations to the local Provincial Head of the National Land Agency Office.

According to Article 39 of Government Regulation number 24 of 1997, the Land Deed Official also has restrictions on loading and issuing a Deed of Transfer of Rights, namely for land whose rights status is not yet clear. In other words, the PPAT must refuse the making and issuance of the Deed of Transfer of Rights if:

- 1) Regarding land parcels that have been registered or ownership rights to apartment units, the original certificate of the right in question is not submitted to him or the certificate submitted is not in accordance with the lists available at the land office.
- 2) Regarding land parcels that have not been registered with him, it is not submitted:
 - a) Proof of rights as referred to in Article 24 paragraph (1) or a certificate from the village head/head stating that the person concerned in controlling the land parcel is not as referred to in Article 24 paragraph (2)
 - b) A certificate stating that the parcel of land in question has not been certified or a statement that the land is located far from the position of the Land Office from the person concerned is strengthened by the head of the village/head.
 - c) One of the parties who will carry out the legal action concerned or one of the witnesses as referred to in Article 38 of Government Regulation Number 24 of 1997 has no right or does not meet the requirements to do so.
 - d) One of the parties or parties acts on the basis of an absolute power of attorney (that is, a power of attorney that cannot be withdrawn and if the appointed party dies it cannot be transferred to another party) which essentially contains the legal act of transferring rights.
 - e) The object of the legal action concerned is in dispute regarding the physical data and juridical data.
 - f) Other conditions are not met or the prohibition specified in the laws and regulations is violated.

Before making the deed, PPAT is obliged to check the suitability of the certificate with the data in the land book at the land office. If at the time of registration of the transfer of land rights, land rights become the object of dispute, the

interested parties can file a lawsuit to the court. In the context of the smooth running of the trial process in court, interested parties may request that it be recorded in the land book in accordance with Article 126 paragraph (1) of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as Regulation of the Head of BPN No. 8 of 2012). PPAT's responsibilities are related to its authority,

- 1) PPAT civil liability
- 2) PPAT criminal liability
- 3) PPAT administrative responsibilities
- 4) PPAT's moral responsibility is based on the PPAT code of ethics.

PPAT is obliged and responsible for keeping the certificate until the blocking is lifted because the dispute can be resolved by deliberation or until there is a confiscation by the court of the land right because it is the object of a lawsuit in the Court. Moreover, because PPAT receives payment for making a deed of transfer of land rights, by which receiving and processing a land certificate until the transfer of name is completed to the land office is an obligation and procedure from the registration stage of the transfer of land rights, including the making of a deed which is the task of the PPAT concerned. ¹²

3.2. Legal Consequences on Land Deed Making Officials (PPAT) Who Make Disputed Land Deeds in Magetan Regency

The dispute over the transfer of land rights in Magetan Regency occurred during the registration of the transfer of land rights after the sale and purchase deed had been made. The dispute occurs because it turns out that the payment has not been paid off or the object of sale and purchase is still the object of debts but is not encumbered with mortgage rights. Whereas PPAT has made the deed according to the correct procedure, namely previously having checked the suitability of the data in the certificate with the data in the land book at the land office which turned out to be no dispute and no encumbrance of mortgage rights.

Article 3 letter e of the PPAT code of ethics explains that one of the obligations of the PPAT is to work with a full sense of responsibility, independence, honesty and impartiality. PPAT's responsibility is as a witness if in making the deed of sale and purchase of land carried out by PPAT it is in accordance with the laws and regulations, if there is a dispute in the Court it is hoped that the testimony of the parties and it is not PPAT's fault in making the deed, then PPAT is only asked to be responsible as a witness only. Because in making the deed of sale and

¹² Ibid

purchase of land, PPAT only obtained data from the parties. So that if an error is caused by the parties, the PPAT will only be held accountable as a witness.

Even though a PPAT has the right to deny, he is still obliged to provide information to the panel of judges, if desired in the examination of cases conducted by investigators, public prosecutors with the approval of the head of the agency. PPAT in carrying out its duties is obliged to comply with the applicable laws and regulations, in accordance with the provisions referred to in Article 38, Article 39 and Article 40 of PP No. 24 of 1997, as well as the provisions of the instructions given by the Minister or appointed Official. If the parties violate the provisions of the article, they can be subject to administrative action in the form of a written warning, compensation is demanded by the parties who suffer losses due to the neglect of the provisions of Article 62 PP No. 24 of 1997.

As an authentic deed, the PPAT deed as evidence that has perfect evidentiary power as long as the certificate is blocked as a result of a dispute will remain authentic because the PPAT deed has been made in accordance with established procedures or procedures so that there is no juridical defect resulting in an authentic deed. It may be canceled or null and void. The legal consequence of the PPAT deed during the blocking is that the deed remains authentic. The sale and purchase without being proven by the PPAT deed will not obtain a certificate, even though the sale and purchase is legal. The transfer of land rights is valid when the material and formal requirements are met and in accordance with the legal terms of the agreement and the legal terms of the sale and purchase, even though it has not been registered at the Land Office. This registration is administrative in nature to be able to provide legal certainty and protection guarantees. Regarding the existence of this land rights dispute, BPN can facilitate as a mediator by resolving it through deliberation. Disputes over land rights can be resolved without being brought to court, with the signing of the peace deed so that the block can be revoked by the block applicant and the deed of sale and purchase along with the documents can be re-registered with the land office.¹³

For this reason, in resolving land disputes, in this case the authenticity of the deed made by PPAT, it is very important to create legal certainty and provide a sense of justice for the parties. Thus, the meaning of the statement that the deed and certificate is a strong means of proof that the purpose of land registration is to provide guarantees of certainty in the land sector. Legal certainty regarding the status of land and/or buildings will provide balanced protection to both those who own the land and those who acquire and control it in good faith and are strengthened by land certificates.

¹³ Ibid

Associated with the theory of authority and the theory of legality, the legal consequence of the registration of the transfer of land rights which is the object of the dispute is that the land office refuses to register the transfer of land rights so that the file is returned to the PPAT. The deed of sale and purchase is still valid because the deed is made by PPAT based on its authority by attribution, namely making an authentic deed as evidence that the transfer of land rights has been carried out, the deed has been made according to the correct procedures and procedures, namely fulfilling material requirements and for miles so that there are no shortages. or juridical disability in accordance with the applicable laws and regulations¹⁴.

PPAT must keep the certificate and the relevant documents returned by the land office due to a refusal to register properly and must not arbitrarily hand over the certificate to one of the parties. Regarding the dispute between the seller and the buyer or with a third party, although there has been a transfer of land rights from the seller to the buyer based on the deed of sale and purchase, but there has been no change in the name of the certificate from the seller's name to the buyer's name, PPAT has no right to hand over the certificate to the buyer during the blocking. . Based on the provisions of Article 31 paragraph (3) PP No. 24 of 1997, PPAT may only submit certificates to parties whose names are listed in the land book concerned as rights holders or to other parties authorized by them.

5. Closing

1) The responsibility of the Land Deed Maker Official (PPAT) in the transfer of land rights is regulated in Article 55 of the Regulation of the Head of BPN No. 1 of 2006, PPAT is personally responsible for the implementation of his duties and positions in every deed making. Civilly, the PPAT is responsible individually or personally for his actions in the implementation of his position, both for the deed he made. As for the storage of certificates as long as land rights are the object of dispute in the event of blocking of certificates, PPAT is responsible based on the position given to him. PPAT is obliged to provide services¹⁵ and is responsible for storing certificates and documents returned by the land office during the blocking of certificates. 2) The implementation of the registration of the transfer of land rights by sale and purchase in Magetan Regency begins with the stage of implementing a sale and purchase transaction between the seller and the buyer. After that, the sale and purchase transaction must be made by the PPAT. PPAT will check the Deposit Receipt (STTS) and PBB Tax Return (SPPT). This check is

¹⁴ Adigita, Monicha R., Ma'ruf, Umar., & Witasari, Aryani. (2019). The Role and Protection of Laws to Notary Related To the Dispute That Made Between the Parties. *JURNAL AKTA*: Vol. 6, No. 4, 783-788. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7631>

¹⁵ Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). Public Notary Services In Malaysia. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

carried out to ensure that there are no arrears in PBB payments. At the same time to calculate the costs and taxes that are the obligations of each party. Where the calculation of these costs can be done based on the Sales Value of the Tax Object (NJOP). Then the deed that has been signed by the parties who made the agreement on the transfer of rights to the land and the witnesses who were present in the process of transferring the rights to the land then by PPAT it is brought to the Land Office to be registered as a certificate of ownership for the new land rights holder. After the registration process, the next step is to wait for data verification from the Land Office for the issuance of certificates. 3) The legal consequences of Land Deed Making Officials (PPAT) who make disputed land deeds in Magetan Regency, namely the registration of the transfer of land rights which are the object of dispute related to the recording in the land book is a refusal to register land rights by the local land office so that it cannot registration or amendment of land data is carried out during the blocking. Based on Article 45 PP No. 24 of 1997, the land office refused to register by returning files in the form of deeds, certificates and related documents to the PPAT concerned as the executor of the registration of the transfer of land rights.

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